

**TESTIMONY OF
ARTHUR E. HAMILTON
PROGRAM MANAGER, FEDERAL LANDS HIGHWAY
FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
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**OVERSIGHT HEARING ON INDIAN RESERVATION ROADS AND
THE TRANSPORTATION EQUITY ACT OF THE 21ST CENTURY**

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to discuss the Department of Transportation's (DOT) implementation of provisions in the Transportation Equity Act of the 21st Century (TEA-21) affecting the Indian Reservation Roads (IRR) program of the Federal Lands Highway Program (FLHP).

History

The IRR program was established on May 26, 1928, by Public Law 520 (Codified at 25 USC 318(a)). The act authorized appropriations for survey, improvement, construction, and maintenance of IRR not eligible for Federal-aid highway funding. The partnership with the Bureau of Indian Affairs (BIA) and Federal Highway Administration (FHWA) began in 1930 when the Secretary of Agriculture was authorized to cooperate with State highway agencies and the Department of the Interior (DOI) in the survey, construction, reconstruction, and maintenance of IRR serving Indian lands. The first BIA/FHWA Memorandum of Agreement (MOA) was signed in 1946 and addressed the location, type, and design of all IRR roads and bridges and the general supervision of all such IRR construction. In 1996, the FHWA entered into a Stewardship

Plan with BIA, similar to the plans under which the FHWA delegates oversight of Federal-aid highway projects to the States.

TEA-21 reaffirmed the Federal Government's commitment to providing safe and efficient access to and within Indian lands and Alaskan native villages by authorizing \$1.6 billion in funding for the IRR program for Fiscal years 1998-2003. TEA-21 also strengthened the commitment of the Federal Government to increasing the involvement of Native Americans in transportation programming and planning by, for example, clarifying that funds under the IRR program shall be available to tribal governments from the BIA for direct contracting of transportation projects.

Increasing Tribal Involvement

The Department of Transportation is committed to building more effective day-to-day working relationships with Indian tribal governments reflecting respect for the rights of self-government and self-determination, based on principles of tribal sovereignty.

In February 1998, the FHWA Indian Issues Task Force issued a report entitled "Guidance on Relations with American Indian Tribal Governments," that provides a framework for FHWA to establish and enhance its government-to-government relations with Indian tribes. This report was distributed to all FHWA field divisions.

In addition, the Department of Transportation is finalizing its policy for working with tribal governments. The policy is being issued as a DOT Order developed by a ONE DOT Task Force. This Order will implement President Clinton's Memorandum on Government-to-

Government Relationships with Native American Tribal Governments and his Executive Order No. 13084, "Coordination and Consultation with Indian Tribal Governments." We expect to issue this DOT order in November during Native American Heritage Month.

Transportation Planning Procedures

As part of the requirements in 23 USC 204(j) to develop transportation planning procedures for the IRR Program, the FHWA and the BIA, in consultation with the tribal governments, developed the "Indian Reservation Roads Program Transportation Planning Procedures and Guidelines (TPPG)." The document is now available as interim guidance effective this month, October 1999.

The TPPG represents a combined effort to define the transportation planning function under the IRR Program. The document explicitly states what is guidance for Indian Tribal Governments and what is a procedural requirement of the law consistent with 23 U.S.C. Section 204(j), "Indian Reservation Roads Planning," and Public Law 93-638, "The Indian Self-Determination and Education Assistance Act," as amended. It also clarifies policies related to funding issues and eligible activities and defines the relative transportation planning roles and responsibilities of the BIA and Indian Tribal Governments. The TPPG, developed in conjunction with tribal transportation planners, represents a good basis for tribes entering into planning activities with other tribes, as well as with State and local governments.

In August 1999, we began conducting training on the IRR transportation planning procedures in cooperation with the BIA and Tribal Technical Assistance Program (TTAP)

Centers. We will be holding a series of two-day workshops offered in all 12 of the BIA regions. State transportation planners are also participating in these workshops.

Tribal Technical Assistance Program Centers

Section 5104 of TEA-21 continued the requirement that we establish local Tribal Technical Assistance Program Centers. We now have cooperative agreements with Colorado State University, Eastern Washington University, Michigan Technological University, Oklahoma State University, and the United Tribes Technical College in Bismarck, ND, and provide funding to the State of Alaska Center. These TTAP Centers provide training and education workshops for Tribal Governments and disseminate information on issues related to the IRR Program and road maintenance.

IRR Bridge Program

Section 1115 of TEA-21 amended title 23 USC to require the Secretary to establish a nationwide priority program for improving deficient IRR bridges, using a set-aside of not less than \$13 million of IRR funds per year.

In order to develop guidance for the Indian Reservation Roads Bridge Program (IRRBP), the FHWA solicited comments through informal meetings with tribal representatives in December 1998. An IRRBP Federal Register Notice was published on February 12, 1999, soliciting comments on project selection and fund allocation procedures. Comments were received from tribal governments, BIA offices, and county and State DOT offices. An Interim Final Rule was published on July 19, 1999.

During fiscal year 1999, we funded all of the eligible 11 deficient IRR bridge projects that were submitted, using about \$8.9 million of the IRRBP funds.

In cooperation with the BIA and the Indian technical centers, we are conducting training sessions on the program procedures and encouraging Indian tribal governments to identify their deficient bridges so that they can apply to obtain funding to repair or replace the bridges.

Negotiated Rulemaking

Section 1115 of TEA-21 required the development of a funding formula and IRR Program procedures using negotiated rulemaking with Indian tribal governments. Two days after TEA-21 was signed, FHWA sent a letter to the Department of the Interior requesting a meeting to discuss this rulemaking. As a result of this and subsequent meetings, the BIA: (1) hired the Federal Mediation and Conciliation Service to facilitate the rulemaking, (2) established a process for selecting tribal representatives for the committee, (3) developed an agenda for an informational meeting with tribal governments, and (4) established the 42 member rulemaking committee. Secretary Slater designated three FHWA employees to serve on the rulemaking committee. These employees are participating in the rulemaking committee and work group meetings. The Department remains fully committed to providing the necessary staff and IRR funding needed to complete this rulemaking. Additional information on the rulemaking is being provided to you by the BIA.

Metlakatla IRR Project

Before concluding, I would like to highlight one specific example of the Department's progress in carrying out Congress's directives in TEA-21. The Walden Point Road construction project for the Metlakatla Indian Community (MIC) of Alaska illustrates the diversity of the IRR program and successful program delivery through joint agency and tribal efforts.

The Walden Point Road project consists of constructing fourteen miles of roads and bridges to link Metlakatla with the Alaska Marine Highway System and with the proposed ferry terminal point at the northern end of Annette Island, improving transportation access to the rest of Alaska. The ferry system is part of the State's Southeast Alaska Transportation Plan, which includes two new terminal facilities and a ferry boat. The project also includes the relocation of power facilities in conjunction with the road construction. The completed project will provide economic opportunity to the Metlakatla Indian Community through the prospective sale of power to Southeast Alaska and by improving access to Ketchikan, the nearest port city and a major stopping point for cruise ships.

FHWA is the lead agency for this project. We cooperate with the Department of Defense (DOD), the Metlakatla Indian Community (MIC), the Alaska Department of Transportation and Public Facilities (ADOT&PF), and the BIA. Our Western Federal Lands Highway Division (WFLHD) is providing bridge design services for the project, while the BIA has provided the funding for the bridge design services and the work associated with the archeological and NEPA processes. Through its Innovative Readiness Training Program, the DOD is providing the heavy equipment and active duty forces for road construction operations.

The funding within the Indian Reservation Roads (IRR) Program alone is not adequate to accomplish the Metlakatla Project. We have also provided Public Lands Highway Discretionary funds to this project. Through new partnering of Federal agencies and tribal entities, leveraging of funds, and flexibility in funding, this joint effort is making expanded transportation access to Metlakatla possible.

Conclusion

To conclude, we are working hard to implement the IRR provisions of TEA-21 as quickly and effectively as possible, and we believe that implementation has gone smoothly. However, we recognize that transportation is a critical tool for tribes to improve the quality of life in their communities to and that there are still many challenges to overcome. The Department of Transportation will continue to do its best to meet tribal expectations. We look forward to working with this Committee to ensure that remaining issues are addressed in a timely, effective, and responsive manner.

Mr. Chairman, this concludes my prepared remarks. I will be glad to answer any questions you or other Committee Members may have.